

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

1 *In re:*

2 SILVIA NUER,

3 *Debtor.*

4 Case No. 08-14106 (reg)
5 New York, New York
6 March 17, 2010

7 CHAP 7 MATTER - TRANSCRIPT RE TELEPHONE CONFERENCE RE
8 DISCOVERY DISPUTE; MOTION FOR PROTECTIVE ORDER PURSUANT TO
9 SECTION 105 AND BANKRUPTCY RULE 7026(C)
10 BEFORE THE HONORABLE ROBERT E. GERBER
11 UNITED STATES BANKRUPTCY JUDGE

12 A P P E A R A N C E S :

13 For Debtor

14 LINDA M. TIRELLI, ESQ.
15 202 Mamaroneck Avenue, 3rd Fl.
16 White Plains, New York 10601
17 (914) 946-0860; (914) 946-0870

18 For J.P. Morgan:

19 JAY TEITELBAUM, ESQ.
20 Teitelbaum & Baskin, LLP
21 3 Barker Avenue, 3rd Floor
22 White Plains, New York 10601-1509
23 (914) 437-7670; (914) 437-7672 fax

24 For David Kittay,
25 Chapter 7 Trustee:

26 MELISSA LOUISE STEINBERG, ESQ.
27 Kittay & Gershfeld, PC
28 100 White Plains Road, 2nd Floor
29 Tarrytown, New York 10591
30 (914) 332-8000; (914) 332-8001

31 For the UST Office:

32 GREG MICHAEL ZIPES, ESQ.
33 33 Whitehall Street
34 New York, New York 10004-2112
35 (212) 510-0500

36 Transcription Service:

37 A-1 Transcripts
38 A1@Court-Transcripts.net

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1 THE COURT: Just a minute, please.

2 MR. CASH: This is Mike Cash.

3 THE COURT: All right. Just a minute. I have Mr.
4 Cash and was it Ms. Tirelli?

5 MS. TIRELLI: Yes.

6 THE COURT: All right.

7 MS. TIRELLI: Yes, Judge, this is Linda Tirelli.

8 THE COURT: All right. Do I have Mr. Teitelbaum?

9 MR. TEITELBAUM: Yes, Your Honor, Jay Teitelbaum,
10 attorney for Chase is on the line.

11 THE COURT: All right.

12 MS. STEINBERG: And, Your Honor, Melissa Steinberg on
13 behalf of the Trustee.

14 THE COURT: All right, Ms. Steinberg. And I have Mr.
15 Zipes in my courtroom with me. Anybody else on the call?

16 MR. TEITELBAUM: Your Honor, this is Jay Teitelbaum.
17 In my office is my partner Ron Baskin.

18 THE COURT: All right. Now I am getting background
19 noise in the back.

20 MR. CASH: Your Honor, it's probably me. This is Mike
21 Cash. I am in New Orleans with my daughter. It's my birthday.
22 I had literally less than 24 hours notice that I was going to be
23 involved in this. We are not a party and certainly by
24 participating, we do not object waive any objection to
25 jurisdiction but I am going to do my best on my cell phone,

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1 literally in the French Quarter in New Orleans with my daughter
2 for my birthday.

3 THE COURT: Well, all right. We're acting under a
4 case management order. You can have whatever reservations of
5 rights you want but you're a party to a discovery dispute and
6 under my case management order, the parties to discovery
7 disputes proceed by telephone.

8 Mr. Cash, I need you to wrap your hand around your
9 cell phone or something, so I don't get background noise and to
10 try to shelter it when you're speaking.

11 Mr. Teitelbaum, I -- well, we can't proceed this way.
12 There's too much noise in the background.

13 MR. TEITELBAUM: Keep it on mute until you're going to
14 speak.

15 THE COURT: I'm sorry?

16 MR. TEITELBAUM: If the cell phone goes on mute until
17 Mr. Cash has to speak that should work, Your Honor.

18 THE COURT: All right. Can you mute your cell phone,
19 Mr. Cash?

20 MR. CASH: Yes, I am really not sure how to do that
21 without being sure of not hanging up on Your Honor, so I am
22 going to try cover it as much as I can.

23 THE COURT: All right. Well I guess another option we
24 have is for me to have a separate call with you dealing with Mr.
25 Zipes' concerns vis-a-vis your compliance. Mr. Zipes is that

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1 acceptable to you?

2 MR. ZIPES: That's fine, Your Honor.

3 THE COURT: All right. Mr. Cash, we will call you
4 back when we deal with Mr. Teitelbaum and Ms. Tirelli's
5 controversy but I can't have the kind of level of disturbance
6 that I have on my call now by reason of the background noise in
7 your situation.

8 MR. CASH: I understand, Your Honor, and I apologize
9 but like I say, we are not even --

10 THE COURT: Mr. Cash, forgive me.

11 MR. CASH: -- a party to this case (indiscernible)
12 over us.

13 THE COURT: Mr. Cash and forgive me, I am going to
14 speak very slowly and softly.

15 MR. CASH: Okay.

16 THE COURT: And I won't raise my voice again.

17 MR. CASH: Okay.

18 THE COURT: But I don't care whether or not you are a
19 party. You have at least arguably evidence relevant in this
20 case and you will meet such discovery obligations as I determine
21 whether or not you are a party.

22 MR. CASH: With all due respect, Your Honor, I do not
23 believe that this court has jurisdiction over my client who is
24 not a resident of the southern district and is not a party to
25 this case and is not --

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1 THE COURT: I will be the judge --

2 MR. CASH: -- (indiscernible).

3 THE COURT: I will be the judge of that and if you
4 don't like it, you can take it to an appellate court with
5 appropriate jurisdiction.

6 MR. CASH: Fair enough, Your Honor.

7 THE COURT: All right. Now -- I now have quiet on my
8 line.

9 Mr. Teitelbaum, would you please explain to me why in
10 the light of my case management order I have a full motion for a
11 protective order from you which says in baby talk that discovery
12 disputes and protective order matters are supposed to be
13 attended to by a conference call?

14 MR. TEITELBAUM: Your Honor, I apologize. I am still
15 getting some noise. I am not sure if Mr. Cash is still on the
16 line.

17 MR. CASH: No, I will get off the line if I am causing
18 a problem. So I will wait for someone to get back with me and
19 I'll drop off the line.

20 THE COURT: Thank you.

21 (Mr. Cash is excused from conference call.)

22 THE COURT: All right.

23 MR. TEITELBAUM: Your Honor, this is Jay Teitelbaum.
24 I am not sure I understood Your Honor's comment or question
25 about why this matter should be by conference call in that we

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1 were prepared to appear in person and I thought it was either
2 the request or the suggestion of chambers that the call be
3 conducted telephonically. I just want to be clear, we were
4 prepared to be there in chambers.

5 THE COURT: You have read my case management order;
6 haven't you, Mr. Teitelbaum?

7 MR. TEITELBAUM: I have, Your Honor. We filed this
8 motion following an attempt to resolve discovery issues with Ms.
9 Tirelli and Mr. Zipes concerning the ongoing issue before this
10 Court with respect to the Nuer case in the matter of the
11 sanctions request against Chase. As reflected in the motion,
12 Your Honor, we actually believe that we've reached agreement
13 with the -- in principle with the US Trustee's Office as to
14 discovery that would proceed in connection with the ongoing
15 matter.

16 We attempted, Your Honor, to discuss this with Ms.
17 Tirelli and reach similar accord with her on the scope of
18 discovery as set forth in the motion. And Ms. Tirelli said that
19 she was not in a position to agree to limit discovery in any
20 manner, shape or form and that we therefore stated to her that
21 we would seek an appropriate motion, by appropriate motion, a
22 protective order of this Court and we then -- we laid out, Your
23 Honor, in our pleading the scope of the issues that were in
24 dispute.

25 Among other things, Your Honor, we believed that the

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1 discovery request in connection with both depositions and
2 documents really aren't at issue, frankly, because we've
3 essentially produced everything in response to prior discovery
4 requests, so that there's really not a dispute over additional
5 document production, again because the discovery request that's
6 currently before the parties and this court is virtually
7 identical to the discovery request that was served at the early
8 stages of this matter. And the documents have been produced by
9 Chase.

10 And in point of fact, to the extent that we continue
11 to obtain additional documents, we've produced them. And to the
12 extent that additional requests are made at depositions for the
13 production of documents, we've produced additional documents.

14 So the documents really aren't at issue. The issue
15 is, Your Honor, with respect to depositions and frankly the
16 scope of discovery and I don't want to speak -- well let me just
17 state that to date, Chase has produced about 1,400 pages of
18 documents in response to requests.

19 We have produced witnesses including Mr. Ferndon. We
20 have produced Ms. Garvis. We have agreed on a date for the
21 production of the Baum firm which is actually another piece of
22 this. We understand -- I think all of the parties are now in
23 agreement that the Court's prior ruling that discovery or
24 deposition be conducted by the 19th got fouled up because of the
25 storm and different scheduling problems. And I don't think

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1 there's any dispute that the parties recognize that they need
2 some additional time, hopefully by the end of this month to
3 complete depositions but that was a little bit taken out of our
4 hands by virtue of the events of the past week with all of the
5 weather. People just could not travel, could not get into New
6 York.

7 But the Baum firm is scheduled for deposition at my --
8 on the 24th. We have Mr. Renaldo Reyes, who is at Deutsche
9 Bank, who is available for a deposition. We asked that he --
10 his deposition at least in the beginning be conducted
11 telephonically because we believe that his deposition would be
12 limited to essentially authenticating a few documents that were
13 produced by Deutsche Bank and undisputed facts. Again, not to
14 speak for Mr. Zipes but Mr. Zipes was in agreement that that
15 made sense since Mr. Reyes is located in California.

16 We've even suggested that if a telephonic deposition
17 is unproductive or doesn't work for whatever reason, that -- you
18 know, arrangements can be made to bring him to New York but at
19 least in the first instance, it did make some sense to try to do
20 it telephonically.

21 THE COURT: Mr. Teitelbaum, I've waited and waited
22 before interrupting you. I asked a very, very simply question
23 and I got a very, very long answer; the question being why when
24 I had a case management order that says that motions for
25 protective orders are to be raised by conference calls with

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1 letters, I get a notebook captioned, "Motion for the Entry of a
2 Protective Order."

3 MR. TEITELBAUM: I am sorry, Your Honor, I apologize.
4 I didn't fully appreciate the question. Again, the reason --
5 the reason is, Your Honor, because this is not a simple matter
6 and we've been before Your Honor on several occasions at status
7 conferences and we did not believe that this matter would --
8 could be fully addressed, appropriately addressed by a letter
9 that would essentially have been the same content, Your Honor,
10 because the issues here are not simple. The issues here go to
11 really the heart of what this dispute presently before the Court
12 is and we did -- and we thought it appropriate that the Court
13 should have all of the information before it to rule on --
14 excuse me -- to rule on this issue.

15 THE COURT: Well then you make such a request to me in
16 a conference call. I had multi-billion dollar discovery
17 disputes in Lyondell Chemical and those lawyers were able to
18 follow the rules. I don't understand why you couldn't.

19 MR. TEITELBAUM: Your Honor, I apologize if I haven't
20 followed the rules. We filed a protective order motion so that
21 Your Honor would have a full record in front of him and could
22 rule on it.

23 THE COURT: Well now you're placing burdens on all of
24 the other parties in this case and I am going to deny it without
25 prejudice to going by the rules. Now we're going to use the

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1 remainder of the time to get this back on track. But I am
2 telling you, Mr. Teitelbaum, that my case management orders are
3 not suggestions. They're not imprecatory terms.

4 MR. TEITELBAUM: I understand completely.

5 THE COURT: And I don't want to be interrupted either.

6 MR. TEITELBAUM: I'm sorry.

7 THE COURT: And I expect full and complete compliance
8 with my case management orders because aside from the burdens
9 that it places on me, it places party -- burdens on other
10 parties in the case, some of whom are not as well funded as you
11 are and it puts them to the test of trying to decide whether
12 they're going to respond in kind and whether my case is going to
13 alternatively burden them or spin out of control.

14 Now tell me what's bothering you that caused you to
15 give me this notebook?

16 MR. TEITELBAUM: Thank you, Your Honor. First is the
17 deposition of Mr. Reyes. We've asked that that deposition be
18 conducted telephonically. As I said, Mr. Zipes had no objection
19 to that and I know he's in court and he can speak for himself.
20 Ms. Tirelli did not want to conduct it telephonically. Your
21 Honor, as I read the rules and the law, telephonic depositions
22 are reasonable and appropriate and there's not even a need for a
23 showing of a hardship. So we would ask that the Court direct
24 the parties that at least in the first instance that Mr. Reyes
25 can proceed telephonically.

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1 THE COURT: All right. Ms. Tirelli, what was the
2 problem with that proposal?

3 MS. TIRELLI: If I may, Your Honor, the problem that I
4 have with that proposal is the amount of documents there are in
5 this case as of today. Mr. Reyes is apparently an employee of
6 Deutsche Bank which as I understand it, maintains all of the
7 original documents and they are quite voluminous. As Mr.
8 Teitelbaum has indicated, there's more than 1,400 pages of
9 documents at this point.

10 Now granted not all of them are suitable for questions
11 to be posed to Mr. Reyes, but a good portion of them are and we
12 don't feel that it would be best to use this time to try to do
13 this telephonically.

14 THE COURT: What does it have to do with whether or
15 not the deposition is taken telephonically in the first
16 instance?

17 MS. TIRELLI: Well it -- Your Honor, I just think that
18 in terms of handling the documents and seeing what is actually
19 before Mr. Reyes and to avoid any sort of confusion on the
20 record, it would just be a lot easier perhaps to make a nice
21 clean record and making it more clear if we have him in person
22 to review the documents.

23 THE COURT: Well if any party wants to question Reyes
24 on any particular documents, why can't he or she send copies of
25 the documents that are to be marked as deposition exhibits to

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1 the other parties in the case, so that instead of you looking at
2 1,400 of them, you're looking at 20?

3 MS. TIRELLI: Your Honor, I suppose we could do that.
4 I was also hoping to have Mr. Reyes in the same room as the
5 original documents. I am not clear on exactly where the
6 original -- those documents are this point. And that was a file
7 I am going to say of approximately 50 pages.

8 I've asked for color-copied, double-sided, you know,
9 documents -- I'm sorry, double-sided, color copies of these
10 documents since I -- some of them -- just for example, the note
11 has been first disclosed to be unendorsed repeatedly but now it
12 comes up that there's an endorsement on the back of it. I would
13 like to know when that endorsement was put there.

14 So you see there's questions regarding the documents
15 and I think that handling the originals would make a difference
16 in this case. I can't trust the copies that have been made.

17 THE COURT: I thought that was addressed a long time
18 ago?

19 MS. TIRELLI: It's not that it's been addressed. I
20 still don't know when that endorsement was put on the back of
21 that note. Mr. Teitelbaum claims to have had possession of that
22 original note back in July and again has sent it back so it was
23 not available when Mr. Hergin (ph.) testified. When it came
24 back to his possession, now there's an endorsement on the back
25 of it. I don't know when that endorsement was put on the back

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1 of that note but that's something that I think Mr. Reyes can
2 certainly speak to being that he is the custodian of the
3 documents.

4 THE COURT: All right. And there's a problem with
5 asking him that?

6 MS. TIRELLI: Well there's a problem with asking him
7 that in terms of, you know, we don't really have clear copies of
8 this. I mean we have some copies, I suppose we could try to use
9 them. You know, we maybe could compromise and perhaps have this
10 by teleconference where we could actually have one appear on a
11 screen, so I could actually see what documents we're looking at
12 just to make sure that we're actually viewing the same document.

13 THE COURT: Did you have a meet and confer with Mr.
14 Teitelbaum on this?

15 MS. TIRELLI: I've tried to, Your Honor. Jay, is that
16 something that we could work out?

17 THE COURT: Mr. Teitelbaum?

18 MR. TEITELBAUM: If I may?

19 THE COURT: What?

20 MR. TEITELBAUM: Your Honor, if I may? We did -- Ms.
21 Tirelli and I did on March 5 discuss the possibility of Mr.
22 Reyes by telephone. She absolutely refused to do it by
23 telephone, so that was out meet and confer.

24 With respect to Mr. Reyes and 1,400 pages, Mr. Reyes
25 is the document custodian. He has no personal knowledge of the

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1 documents. His testimony, frankly -- there are three pages
2 attached to Exhibit E to our motion, which are the documents
3 from Deutsche Bank which was like the checking in of the
4 original loan documents. His testimony would be to the effect
5 of here's what our records show that the documents came in.
6 Here's what the records show that they contained, whether they
7 contained an endorsement, did not contain an endorsement. We're
8 not talking about 1,400 pages. We're literally talking about
9 two or three pages and his knowledge of the fact of whether or
10 not WaMu was the servicer and Chase is now the servicer. Your
11 Honor, in all honesty, that deposition should last about 15
12 minutes.

13 THE COURT: Ms. Tirelli, did you want to go all of the
14 way out to California for this?

15 MS. TIRELLI: (Indiscernible).

16 THE COURT: Wait. You can't talk over me, Ms.
17 Tirelli.

18 MS. TIRELLI: Okay.

19 THE COURT: The question I was asking you was did you
20 really want to go out to California for this deposition?

21 MS. TIRELLI: Well, Your Honor, it's not that I would
22 want to, it's just that I would want to know for sure, you know,
23 that Mr. Reyes is looking at the same documents that I am
24 looking at. You know, again, I am looking at Mr. Reyes'
25 affidavit which he submitted in this case and it does seem the

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1 scope would go perhaps beyond the one or two documents that Mr.
2 Teitelbaum just mentioned.

3 Do I really want to go to California? No, I don't
4 really want to go out to California, Your Honor, but I did
5 submit the affidavit of Mr. Reyes and I would like him to
6 produce him as a witness so I can -- you know, I can actually
7 reasonably --

8 THE COURT: Ms. Tirelli, you can't see my body
9 language but I am going through a fair amount of frustration
10 with you, just like I am going through with Mr. Teitelbaum.
11 This kind of stuff is the kind of stuff that we would deal with
12 in about eight seconds over a phone call when I was a lawyer.
13 If you had a limited number of documents, you would premark them
14 for the deposition. You can copy them in black and white, if
15 it's necessary. You couldn't do it back in the old days when I
16 was a lawyer but you can do it now, you can copy them in color
17 and you work out with your opponent this stuff. You're
18 proposing me to approve lawyers going 3,000 miles for a 15
19 minute deposition?

20 MS. TIRELLI: Your Honor, I am sorry, can I respond?

21 THE COURT: Yes.

22 MS. TIRELLI: Okay. I am not asking you to
23 necessarily ask us to go 3,000 miles for a deposition. If Mr.
24 Teitelbaum would agree to provide color copies of these
25 documents because there are handwritten notes on some of the

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1 documents with divergent colors and whatnot, then I just want to
2 make sure that we're all looking at the same documents. And
3 it's -- we could have this (indiscernible), I think that that
4 should be easy enough to do with today's technology. I would
5 just prefer to have it done that way versus telephone. I mean
6 if I have to try it by telephone first, okay, but, you know I am
7 saying that it would just be more productive if we either had it
8 in person or if we could have it be a teleconference
9 (indiscernible).

10 THE COURT: Mr. Teitelbaum, give her color Xeroxes of
11 the documents. Premark them. Your request for a telephonic
12 deposition is granted without prejudice to the possibility that
13 we might have to do more than that upon a showing of cause.

14 At the risk of stating the obvious, I expect a lot
15 more in the way of meet and confers and thoughtful meet and
16 confers on the part of you guys before any discovery dispute is
17 brought to me, either by means of a notebook or by means of a
18 letter.

19 Next issue?

20 MR. TEITELBAUM: Your Honor, this is Jay Teitelbaum.
21 I am going to apologize. Apparently our phone went bad for
22 about 45 seconds. I just rejoined the call.

23 THE COURT: Well what I said was you are to give to
24 her Xerox copies -- color Xeroxes of the documents you want to
25 mark and you are to premark them. Anybody who may want to give

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1 a witness anything else is to do likewise. And you request for
2 a telephonic deposition is granted without prejudice to
3 anybody's rights to seek or oppose more extensive discovery upon
4 a showing of appropriate cause.

5 MR. TEITELBAUM: All right. That's great.

6 THE COURT: That is a paraphrase of what I said the
7 first time.

8 MR. TEITELBAUM: Thank you, Your Honor. I will get
9 the full transcript obviously and we'll fully conform to that.

10 Your Honor, the next issues relate essentially to the
11 scope of the depositions and the Rule 30(b) request that the
12 Debtor has served upon us. And, Your Honor, the reason for the
13 request of this Court to become involved is because we
14 specifically had discussions with the Office of the US Trustee
15 on the scope and the US Trustee agreed -- again, without
16 prejudice obviously, as things evolved but agreed to the scope
17 of the discovery going forward based upon the pleadings filed in
18 this Court were appropriately limited to the facts and
19 circumstances of the Garvis and the Walter assignments, the two
20 assignments which have given parties concern to date and
21 generally how the motion for relief was prepared.

22 And then I will add to that, given Ms. Tirelli's
23 second amended objection which narrowed the scope and eliminated
24 the prior objection, essentially the issue of standing and facts
25 related to that, what we're faced with, Your Honor, is a Rule

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1 30(b) request that goes into a multitude of issues which are not
2 before the Court, not part of any pleading in front of this
3 Court and we at Chase are prepared to produce and have produced
4 witnesses to talk about and testify about the Garvis assignment,
5 the Walter assignment, the loan and how the motion for relief
6 was prepared.

7 But, Your Honor, for example, the discovery requests
8 include number 5, the operation of the legal network, including
9 how attorneys are selected, paid for, who they report to, how
10 their fees are fixed. Your Honor, we've objected to that on any
11 number of grounds but most of which has absolutely nothing to do
12 with anything in this case.

13 Your Honor, we've also for example in discovery
14 request number 3, the entry and preservation of collector notes
15 and records. Your Honor may recall from the facts of this case,
16 this loan was not paid for more than a year before Chase became
17 the servicer. We can certainly as Ms. Tirelli knows, produces
18 someone that says there are no notes and collector records but
19 she knows that because she knows that there were no payments.
20 And by the way, there were not allegations, not a single
21 allegation in the pleadings that refer or relate to collector
22 notes.

23 Number 4, how a payoff number is calculated. Your
24 Honor, the Debtor has admitted signing the note, signing the
25 mortgage, not having made payments. There's no dispute as to

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1 this fact or issue in the case. And so we've said look, we'll
2 produce a witness that will testify about how the loan was
3 produced but to try to produce, you know, X number of witnesses
4 with respect to issues that are not before the Court is
5 burdensome.

6 Request number 6, Your Honor, the Debtor has asked for
7 a witness to testify and to quote, "various notations in the
8 documents that were produced." We met and conferred with Ms.
9 Tirelli to ask her to please try to identify those documents on
10 which there were notations or notes which she had questions.
11 She told me all of them.

12 Now, not all of them have notations and not all of
13 them are relevant to the issues before this Court. So we would
14 request in that regard that if there are issues that Ms. Tirelli
15 has with notations or stray markings on documents, we will do
16 our best to produce a witness that could address those issues.

17 And we would also point out that we did produce Mr.
18 Herndon who has knowledge of the computer databases and the
19 computer documents that are prepared in this case. Ms. Tirelli
20 has the documents before her. She did not ask Mr. Herndon those
21 questions. So we have produced a witness. We're ready to do it
22 again but we think that it is reasonable to request that Ms.
23 Tirelli identify out of the documents those which she believes
24 are at issue.

25 And similarly, Ms. Tirelli has asked for identify -- a

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1 witness to essentially authenticate every document that has been
2 produced in this case. Again, we've asked her to plead identify
3 those documents to which she has an issue on authentication and
4 to which authentication is required under Federal Rule of
5 Evidence 902, and with respect to the fact that her own client
6 has signed a request for admissions acknowledging her signature
7 and/or initials on the original loan documents.

8 So we don't need -- there's no dispute as to the
9 authenticity of those documents and in point of fact, those
10 documents were originated by an entity that is defunct and
11 there's not a live person that could authenticate. And as we
12 set forth in our motion in a case out of the District of
13 Illinois, in this type of situation, this type of business
14 record is presumptively authentic unless there's some showing
15 that it isn't. And frankly in this case, we have the Debtor
16 acknowledging her signature on the document; on the note, on the
17 mortgage and on related documents.

18 The requests for internal processes for Chase as far
19 as making a determination as to the validity of a claim, Your
20 Honor, there is no dispute. We can do it with respect to this
21 loan if the Court would so order us to do it but again
22 respectfully, there is no dispute on this issue. And we are
23 concerned as frankly was the case in LPS (ph.) in which sort of
24 brought this -- that other matter before Your Honor was that the
25 deposition metamorphous itself into something that goes from the

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1 specific loan to general practices and policies unrelated to the
2 loan. And we are extraordinarily concerned about the scope and
3 we've tried to get an agreement limiting it, and we have not
4 been able to do that, getting the discovery limited to this
5 loan.

6 Request number 8, the Debtor asked --

7 THE COURT: Mr. Teitelbaum, would you try very hard --
8 try to speak a little more directly, a little more quickly.
9 This conference call is going on interminably.

10 MR. TEITELBAUM: Your Honor, there are approximately
11 10 or 11 requests and the bottom line is, we have reached an
12 agreement in principle with the US Trustee which would limit the
13 scope of discovery to the assignments with respect to Ms. Garvis
14 that she executed, that Mr. Walter executed and with respect to
15 in general how the motion for relief was prepared.

16 Essentially, Your Honor, that's the substance of our
17 motion, that we would ask that Ms. Tirelli limit her discovery
18 to that which the US Trustee has asked for, as well in this case
19 based on what's presently before the Court.

20 THE COURT: All right. Ms. Tirelli, do you want to
21 respond?

22 MS. TIRELLI: Yes and I will try to be brief, Your
23 Honor. I have questions regarding a lot of the documents that
24 have been produced in this case and it's at the point, I cannot
25 trust anything that is being handed over to me.

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1 Most recently in Mr. Teitelbaum's email which I
2 believe was March 4 if I am not mistaken, he references again
3 advocating for the assignments of mortgage which we already know
4 were somewhat falsifies, that he advocates that they were, in
5 fact, notarized documents.

6 Well after speaking -- after taking the deposition of
7 Ann Garvis, apparently she never signed that in front of a
8 notary. Mr. Walter yesterday testified that he's not sure when
9 those notaries attached the notarization, the second page of the
10 document that he signed. So I can't take it for granted that
11 anything being handed to me is what it purports to be. It
12 could well --

13 THE COURT: That's non-responsive, Ms. Tirelli. What
14 I need to know is why on any document you want to ask questions
15 on you can't just say these are the documents upon which I need
16 a qualified witness and why you're making your opponent go
17 through 14,000 (sic) documents without telling him what you want
18 to question on. And if you need to look at the documents, in
19 color or otherwise, before you do it, why don't you look at the
20 documents and make your request after that?

21 MS. TIRELLI: Okay. Your Honor, then perhaps what I
22 should do at this time is take a review of the documents and
23 give him -- and give Mr. Teitelbaum a more specified list of
24 exactly what I want to question on.

25 THE COURT: Thank you.

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1 Next issue?

2 MR. TEITELBAUM: Your Honor, that was really the issue
3 that we tried to resolve -- that I tried to resolve on March 5
4 telephonically with Ms. Tirelli. I will just note that on two
5 separate occasions Ms. Tirelli was at my office and viewed for a
6 couple of hours the original loan documents. We have made those
7 available to her and for her to say she doesn't know where they
8 are, they are still in my office. And she knows that and we
9 made them available.

10 MS. TIRELLI: Okay.

11 MR. TEITELBAUM: And there are --

12 MS. TIRELLI: I don't know that.

13 MR. TEITELBAUM: Okay. Your Honor, this --

14 THE COURT: All right. Wait. Mr. Zipes, do you want
15 to get into this food fight?

16 MR. TEITELBAUM: Hello?

17 THE COURT: Just a minute, Mr. Zipes is coming to the
18 lectern.

19 MR. ZIPES: Judge, I am listening to this with some
20 feelings of anguish because I had actually had thought until
21 this motion was filed by Mr. Teitelbaum that the parties were
22 cooperating. I actually think that outside certain requests,
23 maybe one side wants to give a little bit less and one side
24 wants to give a little bit more, but for the most part this has
25 been a consensual discovery process.

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1 And I think, frankly, Ms. Tirelli after I have had
2 discussions with her, was prepared to modify her request. I am
3 not quite sure that this motion was necessary and I think the
4 parties have worked cooperatively, generally, Judge. And this
5 actually is not a good indication of what's been going on in the
6 discovery process.

7 We do have serious issues in this case. The
8 assignments are -- contain incorrect information. Chase has
9 until yesterday at least, cooperated in producing every witness
10 that we've asked for. I think that there's some question that
11 we want to make sure that Chase isn't going to offer some other
12 witness, that they haven't already produced at the time of a
13 trial or an evidentiary hearing before this court.

14 Mr. Teitelbaum just now earlier said we could do this
15 by telephone but if that doesn't work out, we'll do it some
16 other way. That's the Mr. Teitelbaum frankly that I know.
17 That's not necessarily what he was saying before today but I
18 think we can work all of these issues out, Judge. And again,
19 that's all I have to say.

20 THE COURT: All right, folks, what is there that you
21 don't think you can work out that I need to decide as the Judge?

22 MR. TEITELBAUM: Your Honor, this is Jay Teitelbaum.
23 Just very quickly, I greatly respect Mr. Zipes but I think what
24 you've heard on this call, frankly, is that Ms. Tirelli had
25 asked for a lot of information. I've tried to work with it.

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1 Chase has tried to work with it. It has not been cooperative in
2 that regard and that is why we did make the motion.

3 With respect to the telephonic issue, Your Honor, that
4 was actually frankly right in our pleading. It was offered up
5 from the get go and we were unfortunately unable to make a --
6 get a resolution on that.

7 What I would ask the Court for at this point, Your
8 Honor, is the -- a direction that limits the discovery to the
9 issues which Mr. Zipes and myself have tried to work through
10 which were the Garvis and the Walter assignment and how the
11 motion for relief was prepared and to eliminate from the
12 discovery issues at this point the extraneous underlying facts
13 which are not before -- not in dispute here.

14 THE COURT: All right. Ms. Tirelli, help me with that
15 point that Mr. Teitelbaum made a moment ago -- it was more than
16 a moment ago, it was quite a long time ago -- about you asking
17 for stuff beyond issues dealing with the Garvis, Walter
18 assignments, how the motion for relief was prepared and the
19 issue of standing?

20 MS. TIRELLI: Okay, Your Honor. Mr. Zipes and I have
21 very similar interests in this case but they're not exactly
22 congruent. The Debtor certainly has questions regarding
23 standing and regarding the chain of custody and chain of
24 ownership of her loan documents. I understand that Mr.
25 Teitelbaum seems convinced that his documents are going to be be

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1 all, end all but there's yet anybody to actually come forth and
2 authenticate these documents. Hopefully Mr. Reyes will be able
3 to help us in that regard but I don't know yet. We haven't
4 deposed him yet. So I think that limiting discovery at this
5 point would just be premature.

6 And I also want the Court to know, and I think this
7 was indicated in my email which I did provide to the Court, I
8 have been stating right along, you know, let's work this out.
9 It's not that I am not willing to narrow the scope. I am saying
10 just not at this time; let's see how these depositions progress.
11 Mr. --

12 THE COURT: Ms. Tirelli, you've just done the exact
13 same thing that I criticized Mr. Teitelbaum for. I asked a
14 simple questions and you answered a different question at
15 excruciating length. The question I asked is why do you need at
16 this point, if ever, information going beyond the circumstances
17 of your particular client?

18 MS. TIRELLI: Well, Your Honor, I don't think that I
19 am asking for anything that's going beyond the circumstances of
20 my client. You know, again I will take a look at the discovery
21 requests I have made and to the extent that I am able to narrow
22 them, I will certainly work to do so.

23 THE COURT: All right. Mr. Teitelbaum, your request
24 that the document production and the testimony be limited to
25 your particular client is granted for the time being without

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1 prejudice to Ms. Tirelli's or to Mr. Zipes ability to get more
2 upon a showing of cause.

3 Now with that said, we've gone on for almost an hour
4 and I am going to give you ten more minutes. And then I am
5 going to make you guys go back and confer the way you should
6 have conferred the first time before I spend any more time on
7 these disputes because frankly, folks, I am losing my patience.

8 Now Mr. Teitelbaum, are there any unique issues that
9 are incapable of being dealt with by a meet and confer?

10 MR. TEITELBAUM: Your Honor, the most troublesome one
11 I would like the Court to focus on at this point is this request
12 number 5; the operation of the legal network including how
13 attorneys are selected, how they are paid, who they report to,
14 how their fees are fixed or set (indiscernible) --

15 THE COURT: I thought I just ruled on that.

16 MR. TEITELBAUM: -- to the party retained. Your
17 Honor?

18 THE COURT: I thought I just ruled on that, that I was
19 saying that you don't need to produce --

20 MR. TEITELBAUM: (Indiscernible.)

21 (Cross-talk)

22 THE COURT: Mr. Teitelbaum, you can't talk over me.
23 Forgive me.

24 MR. TEITELBAUM: I'm sorry.

25 THE COURT: I don't know why I am asking you to

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1 forgive me but I've just ruled on that. I said that if it
2 doesn't particular effect this client, it's not going to be
3 produced at this time.

4 MR. TEITELBAUM: Thank you. And this client just
5 meaning Ms. Nuer. That's what I wanted to understand.

6 THE COURT: Yes.

7 MR. TEITELBAUM: Thank you. Then, Your Honor, I don't
8 have anything further.

9 MS. TIRELLI: I do.

10 THE COURT: All right. Go ahead.

11 MS. TIRELLI: Yes, and hopefully, on -- you know, I
12 did try to confer with Mr. Teitelbaum on this yesterday but he
13 thought that we would, you know, bring this up at this time.
14 Mr. Teitelbaum informed me that he is producing attorney Amy
15 Przewozny, I guess as a 30(b)(6) witness. Attorney Przewozny is
16 an attorney with the Steven J. Baum Law Firm. I am not sure --

17 THE COURT: With the what law firm? With the Baum Law
18 Firm?

19 MS. TIRELLI: Yes, she's a -- right. She's -- my
20 understanding is -- and I do know Amy. She is an attorney with
21 the Baum Law Firm. I believe she graduated law school in about
22 2004 and she's the managing attorney over there. She, as far as
23 I am aware of, did not submit any of the documents in this case.
24 So I did ask Mr. Teitelbaum how it is that she's the choice of
25 witnesses and he told me that she's the 30(b)(6) witness and

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1 said I will just figure it out. I don't quite know that what
2 means. If she's going to be asserting the attorney-client
3 privilege to every question that I ask, I am still willing to go
4 forward with the deposition, Your Honor, but we're going to end
5 up with a transcript that's just, you know, repeating the same
6 line; attorney-client privilege as the answer.

7 THE COURT: Well is your problem that she is going to
8 be asserting or may assert the attorney-client privilege or is
9 it that she's the wrong 30(b)(6) designee?

10 MS. TIRELLI: I guess it's both, Your Honor. I just
11 don't see how she can be a 30(b)(6) designee and if she is, is
12 she waiving the attorney-client privilege?

13 THE COURT: Well 30(b)(6) designations have nothing to
14 do with the attorney-client privilege. The law is quite clear
15 that attorneys can be required to testify but that that doesn't
16 make the attorney-client privilege go away.

17 On the issue of who is the proper 30(b)(6) designee,
18 you have the key to the jail in your pocket by being more
19 specific as to what you want to question on and if you do that,
20 they've got to produce the right guy or woman and if they don't
21 do that, you can keep getting orders from the Judge to keep
22 having him produce people until you get the right one.

23 But the attorney-client privilege issue and the proper
24 designee issue have nothing to do with each other.

25 MS. TIRELLI: Okay. Thank you, Your Honor.

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1 THE COURT: Mr. Zipes?

2 MR. ZIPES: Yes, Judge, not to belabor the issue here
3 but this is exactly the type of issue that until -- I won't say
4 the motion but the parties have been able to work this out. My
5 office had the same exact question as Ms. Tirelli. We're
6 relying on Chase to produce someone who is familiar with how
7 this motion was prepared. Chase has chosen to produce Amy
8 Przewozny. We are going to depose her with the assumption that
9 this is the right deponent and if it's not or we need someone
10 else, which it appears likely that we would, we would have that
11 conversation with Jay Teitelbaum.

12 THE COURT: You already told Mr. Teitelbaum that what
13 you want to question the Baum witness on was how the motion was
14 prepared.

15 MR. ZIPES: That's correct. The Chase party that
16 helped prepare this motion, that's what my office wants that led
17 to an assignment of --

18 THE COURT: But the Chase business person or the Baum
19 lawyer?

20 MR. ZIPES: Well see, Judge, this is the discussions
21 that we were having. We're leaving it to Chase. We're saying
22 we want the people at Chase who were involved with preparing
23 this motion to vacate the stay which have bad information on it.
24 And all that Chase has produced to date are LPS, which we have
25 issues with because we weren't able to depose, and we don't know

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1 -- and they're producing an attorney to describe the motion.
2 And they produced Mr. Herndon, as well, who described the chain
3 of title but who wasn't involved with this motion.

4 Judge, what my office -- my office actually thinks
5 there are going to be very few contested facts at the end of the
6 day before this Court. We expect to enter into stipulations
7 with Chase on this, if it ever becomes an evidentiary hearing.

8 The issue for this Court to decide is going to be what
9 Chase's duties were in vetting its own motions to vacate the
10 stay. Everybody they've produced to date has had virtually no
11 information on the motion that was put before this Court or the
12 assignments which had bad information. It was people signing
13 their names on the dotted line for the most part and we're still
14 waiting as part of discovery to figure out who at Chase was the
15 person reviewing this motion in depth and detail before it went
16 out. That's the issue that is going to be before the Court.
17 Chase is going to say that yes, they made some mistakes but no
18 worries. And that's really the issue that my office sees.

19 So LPS is Mr. Walter, that was yesterday. We were
20 surprised at the problems that occurred yesterday because we
21 were operating in a very consensual way in producing witnesses.
22 LPS has elected at the last moment, Judge, to assert that
23 service of a subpoena was improper and I know that Mr. Cash is
24 not on line right now but I don't think he would say anything
25 different here.

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I am in agreement with the General Counsel of LPS which is, Judge, a publicly traded company. They were supposed to produce a witness yesterday and answer our questions in connection with the assignment. It turned into a charade where we weren't allowed to ask questions. There were objections on the grounds of relevance, for example.

Mr. Cash did not like the fact that I was asking about what happened in LPS and the assignment after 2008. He said that's irrelevant. And not citing any rules of evidence, that's when he said I am directing the witness not to answer that. And then he walked out.

THE COURT: Wait. He directed the witness not to answer a question for grounds under the privilege?

MR. ZIPES: That's -- well, Judge, first he said he was there as a volunteer and not pursuant to the subpoena which we served because -- and he was there as a volunteer. And then he picked and chose the questions that he was entitled to answer.

I actually -- one of the documents that my office asked for from them, the one document was, what is LPS' operational agreement with Chase that allows LPS to assign an assignment on behalf of Chase and add that to a motion to vacate the stay and Chase has disavowed any responsibility apparently for LPS' action in this case. They said they're represented by separate counsel. We're not responsible for them, even though

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1 they prepared an assignment that made it to this court.

2 He refused to produce that document and he's claiming
3 that we don't have jurisdiction over him, even though we had
4 this agreement and I sent a subpoena to General Counsel of LPS.
5 Chase was on all the email chains when this happened. I was
6 taken aback when the day before this deposition, LPS took --

7 THE COURT: Well, Mr. Zipes, I think with Mr. Cash not
8 on the phone --

9 MR. ZIPES: Yes.

10 THE COURT: -- it's inappropriate for you to be
11 talking anymore --

12 MR. ZIPES: I'm sorry.

13 THE COURT: -- about LPS.

14 MR. ZIPES: Okay. But -- I'm sorry.

15 MR. TEITELBAUM: Your Honor, if I may briefly, this is
16 Jay Teitelbaum.

17 With respect to LPS, Mr. Cash is not on the line, I
18 think he would take issue with a lot of what Mr. Zipes said
19 today. I was there. Mr. Walter, the person who signed the
20 assignment attached to the motion for relief, was the witness.
21 He testified that he identified the signature. The objections
22 that came from Mr. Cash related to issues unrelated to the
23 execution of the assignment. They related to the business
24 practices of LPS.

25 I just want the Court to be aware that from where I

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1 was sitting, Mr. -- LPS was there at the request of Chase to
2 answer questions regarding the assignment in this case. When
3 the questions went beyond that scope, Mr. Cash lodged
4 objections. And he -- Mr. Cash also did bring with him a
5 servicer's agreement and offered that it be used during the
6 deposition, provided that the parties would agree for the
7 purposes of the deposition that it be confidential with everyone
8 reserving their right to then, if it needed to be made public,
9 be made public and that offer was made on a couple of occasions
10 during the deposition. Mr. Zipes and Ms. Tirelli were not
11 comfortable with that and so Mr. Cash did not produce the --

12 THE COURT: Mr. Teitelbaum, I have the same problem
13 with you. I don't want to discuss this further with Cash not on
14 the line.

15 MR. TEITELBAUM: I --

16 THE COURT: I am also having problems with the fact
17 that we're still not done and we've taken twice the amount of
18 time that I took in my last three discovery dispute conferences
19 in Lyondell Chemical in matters involving a 23 billion dollar
20 LBO. Now --

21 MR. TEITELBAUM: Your Honor, from our perspective,
22 you've ruled and we appreciate that and we don't have anything
23 further. I honestly just wanted to not leave the LBS issue with
24 only one side being --

25 THE COURT: Well, you're going to have to stay on

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1 because we're going to get cash on in a minute. But if there is
2 one thing that I am hoping I made clear is that the meet and
3 confers have not been satisfactory between you and Ms. Tirelli
4 and you Mr. Teitelbaum. And I don't want to issue an order
5 prohibiting you from filing motions, Mr. Teitelbaum but I don't
6 want further motion papers from you on this kind of stuff. And
7 Ms. Tirelli, I must confess to you, by being shocked by the lack
8 of thought and lack of refinement that you had in your
9 questions. So I am furious at both of you.

10 Now what we're going to do is I am going to extend the
11 discovery cut-offs to the extent necessary. You're going to
12 spend the next two weeks meeting and conferring and working out
13 the details of this stuff. And you're going to be more focused
14 in your request, Ms. Tirelli and you're going to be less
15 stonewalling in your responses, Mr. Teitelbaum. And you're not
16 going to be hitting her over the head with a sledgehammer when a
17 phone call or a thoughtful response or saying okay, I will give
18 you color Xerox would skin the cat.

19 Now let's get Cash on the phone.

20 COURT CLERK: I don't have Mr. Cash's cell phone
21 number. I don't know what -- do you have Mr. Cash's cell phone
22 number?

23 MR. ZIPES: I don't have his cell number, I am sorry,
24 with me. I saw you walking around with a little card.

25 COURT CLERK: Yes, this is not it.

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1 MR. ZIPES: I thought you did.

2 THE COURT: What do we have on tomorrow's calendar?

3 COURT CLERK: Judge, we have several status
4 conferences and you also have several lis stay motions in your
5 smaller cases.

6 THE COURT: All right. We're going to continue this
7 conference via conference call after my morning calendar
8 tomorrow. Get Cash on it. And his birthday will be over then
9 and whether or not his celebrating is over, he will participate
10 in that call and tell him he's got to be in a quiet place to
11 participate.

12 MS. TIRELLI: Your Honor?

13 THE COURT: Yes, Ms. Tirelli, is that?

14 MS. TIRELLI: Yes. It's Linda Tirelli, Your Honor. I
15 have a hearing before Judge Schiff tomorrow up in Bridgeport.
16 So I am afraid that, you know, at about 1 o'clock -- because I
17 would have to leave my office no later than 1:00 if I am leaving
18 from --

19 THE COURT: When is your hearing before Judge Schiff?

20 MS. TIRELLI: It's at 2 o'clock, but depending on
21 where it falls on the calendar, I could be there until 4:30. I
22 can certainly, you know, do a conference as long as I am off the
23 phone by 1 o'clock, but if you have a calendar in the morning,
24 then I probably would not think you would be available until
25 after 4:30.

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1 THE COURT: Can we do it at 8 o'clock in the morning
2 tomorrow?

3 MS. TIRELLI: I would be more than happy to do it at 8
4 o'clock in the morning, Your Honor.

5 THE COURT: All right. 8 o'clock in the -- well,
6 wait, we need to be sure that we have that cell phone number
7 from Helene or that one of you can reach this guy.

8 MR. TEITELBAUM: I have -- this is Jay Teitelbaum. I
9 have his cell. I can provide it to the Court right now or I can
10 try to reach him but frankly, I would prefer not to be
11 responsible to try to reach him but I am happy to do it.

12 THE COURT: Well I want -- we can't affect his rights
13 without him being on the call but I am not going to subject
14 myself or the other parties in this case to listening to a lot
15 of background chatter in a New Orleans party. So we'll do it at
16 8 o'clock tomorrow eastern time, because I assume New Orleans is
17 on central time and he's got to be in a quiet place.

18 MR. TEITELBAUM: Your Honor, I can undertake to reach
19 him. I have his -- what -- should we use the same call in
20 information?

21 THE COURT: I don't know what call information is
22 going to be used. It's going to be on the record in the
23 courtroom.

24 MR. TEITELBAUM: Yes, but I had provided a call in
25 information for the parties and the Court on this. Should we

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1 use the same information?

2 THE COURT: Fine with me.

3 MR. TEITELBAUM: Ms. Blum has that and all of the
4 parties have it already, so I don't -- I will not, unless you
5 need it again, I am not going to recirculate it.

6 THE COURT: All right. The only question is, Ms. Blum
7 is usually in by 8 o'clock. So -- but you would need that --
8 give my law clerks the call in information again, Mr.
9 Teitelbaum, off this call.

10 MR. TEITELBAUM: Okay. I have it here, can I -- if I
11 may?

12 THE COURT: You can do it right now then; yes. Go
13 ahead.

14 MR. TEITELBAUM: It's -- the dial in number is 404
15 area, 443-6397. The pass code or the access code is 6950334#.
16 And I will join in as the host and everyone will connect.

17 THE COURT: All right. Are we adjourned then?

18 MR. TEITELBAUM: Your Honor, I will contact Mr. Cash.

19 MR. ZIPES: Is the courtroom actually going to be open
20 tomorrow or should I just call in?

21 THE COURT: We'll make sure. When I get in, which is
22 usually well before 8 o'clock, I will make sure the courtroom's
23 open.

24 MR. ZIPES: Okay. Thank you, Your Honor.

25 THE COURT: Or maybe it's easier for you just to call

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1 in like everybody else, Mr. Zipes.

2 MR. ZIPES: Okay. Thanks.

3 THE COURT: All right. We're adjourned.

4 MR. TEITELBAUM: Thank you.

5 MS. TIRELLI: Thank you, Your Honor.

6 (Matter concluded)

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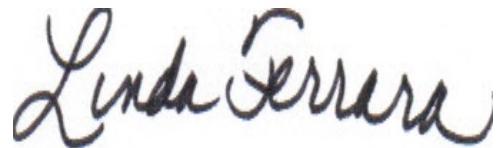
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CERTIFICATION

I, Linda Ferrara, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: March 22, 2010



Signature of Approved Transcriber